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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,893	09/23/2003	Thomas E. Jenkins	3085.004	8199

7590 04/04/2006

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EXAMINER

BARRY, CHESTER T

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

*Cu*

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/667,893		JENKINS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Chester T. Barry		1724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/15/05</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1724

The rejection under Sec. 112, 2<sup>nd</sup> paragraph, is withdrawn in view of applicants' arguments and citation to the definition of "continuing" provided in the specification.

Claims 1 – 4 are rejected under 35 USC Sec. 103(a) as obvious over the Rindt reference in view of the art cited at the top of page 2 of the last Office action for the reasons given in the previous action.

It is emphasized that it would have been obvious to have used Rindt's calculated OUR parameter to control the bioprocess because each of the secondary references suggest using OUR or a form thereof as the measured parameter in a bioprocess control scheme in which process variables, e.g., air flow rate, return sludge rate, waste sludge rate, etc, are manipulated for the purpose of controlling OUR. It was known to employ PLC controllers to manipulate flow valve actuators for the purpose of controlling these or other manipulated variables.

Applicants' arguments based on nonobviousness were carefully considered, but they were not persuasive of patentability. The examiner concedes that the primary reference does not anticipate the claim. But a prior art teaching's failure to anticipate an applicant's claimed invention does not necessarily render the latter patentable.

Alternative grounds for refusing allowance of the application exist, e.g., Sec. 103(a).

The claims are properly rejected under Sec. 103( a) because the art fairly suggests the

Art Unit: 1724

combination of teachings necessary to meet the claimed limitations for the reasons given above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

A handwritten signature in black ink, appearing to read 'Chester T Barry', with a long horizontal stroke extending to the right.

Chester T Barry  
Primary Examiner  
GAU 1724  
571-272-1152